1944 (K) File No. Cr. A Bij./44

Legal DEPARTMENT

A BRANCH

Examined

Subject:— Criminals Appeals in the High Court, Bombay against the order of Acquittals from Bijapur District

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K.J. Velankar

Superintendent,
D Branch, Legal Department.

P 23 (E)

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O P I N I O N.

Imperator

Vs.

Siddappa Bhimaraya Budgi and 9 others -- Accused.

The case for the prosecution is that on the 18th July 1942 at Moratgi all these accused entered into an agreement that accused Nos. 1 to 3 should commit murder of one Ningappa Bonal of Moratgi and that accused Nos. 4 to 10 should lie in waiting to rescue accused Nos. 1 to 3 in case any of them was held up by the people of Ningappa; that accused Nos. 1 to 3 in furtherance of their common intention to cause the death of the said Ningappa went to his house and there accused Nos. 2 and 3 held Ningappa by his hands and accused No.1 stabbed him once with a small dagger in his abdomen; that when neighbours came, accused Nos. 2 and 3 left Ningappa and ran away; that accused No.1 was caught inside; that accused Nos. 2 and 3 then ran to the place where accused Nos. 4 to 10 were lying in wait and told them that the game was over, but accused No.1 was caught; that accused Nos. 4 to 10 then ran to the house of Ningappa and began pelting stones at his house in such a manner as to endanger personal safety of others; that accused No.1 went away even before accused Nos. 4 to 10 began to throw stones; and that Ningappa having succumbed to his injury the next day in the Mission Hospital at Miraj, accused Nos. 1 to 10 were therefore charged for criminal conspiracy punishable under section 120-B, accused Nos. 1 to 3 were guilty of murder punishable under section 302 read with section 34, and accused Nos. 4 to 10 were guilty of rioting and also of doing a rash and negligent act endangering personal safety of others punishable under sections 147 and 336 of the Indian Penal Code.

The story of the prosecution is set out in paragraphs 2, 3, 4, 5, 6 and 7 of the judgment of the learned Sessions Judge.

Then paragraphs 8 and 9 deal with the Police investigation.

Paragraphs 11 and 12 deal with the defence of the several accused. The defence of accused No.1 is that when he want to the house of Hippargi to ask from one Gurappa Kambar, who was there, to pay him his dues to the tea-shop, Ningappa and five others, who were there to dispossess Gursiddappa of the house by force, beat him severely and caused him 19 injuries which were found on his person by the Medical Officer on 18th July 1942. He further stated that Ningappa the deceased came to stab him with a dagger, and apprehending that he would be killed, he snatched the dagger from Ningappa's hand and was about to stab him when he was given a blow with a stick on his face, and he fell down unconscious and did not know whether he actually stabbed Ningappa or not. He further added that when Ningappa was about to stab him Gursiddappa Hippargi, whom Ningappa and five others wanted to dispossess by force, came running with a dagger, and that he did not know whether Gursiddapa, who had been absconding ever since, did really stab Ningappa. So his defence amounts to this: First, that in exercise of the right of private defence he struck the deceased Ningappa with a dagger, as he thought that he would be killed; and secondly, according to his statement, that Gursiddappa, who was to be dispossessed forcibly by Ningappa and five others, had come running with a dagger and perhaps he might be responsible for the injuries received by the deceased Ningappa on his person. As regards the other accused, they pleaded that they never went to Hippargi's house that day, and that they were falsely involved in this case on account of enmity. Accused Nos.4 to 10 deny that they were lying in wait in the tea shop of accused Nos. 1 and 6, and that they never went to the house of Hippargi and never threw stones at the house of Hippargi. According to them, they have been falsely involved in the crime on account of enmity.

There is no doubt that the deceased Ningappa was injured on the left side of his stomach by means of a sharp instrument as a result of which he succumbed after 24 hours, in the Miraj Hospital.

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There is also no doubt that so far as accused No.1 is concerned he admits his presence at the scene of the offence at the time when Ningappa was killed. His version is that Ningappa took up the initative and was the aggressor, and he having been injured caused the death apprehending that he would be killed at Ningappa's hands. He was just at the time removing the dagger from the deceased and aiming a blow with a dagger at him.

The prosecution evidence consists of two eye witnesses who appeared on the scene after hearing a noise, as they say, and those witnesses are Satappa (Exhibit 11) and Gurpadappa (Ex. 13). There is also the statement of the deceased recorded soon after the occurrence, wherein he also says that accused Nos. 2 and 3 held his (deceased's) hands and accused No.1 stabbed him with a small dagger. The prosecution further rely, so far as accused Nos. 4 to 10 are concerned, who are charged under sections 147 and 336 of the Indian Penal Code, upon the evidence of witnesses Basappa (Ex. 6), Satappa (Ex. 11), Shivlingappa (Ex. 15), Sangappa Bomal (Ex. 19), Hydarsab (Ex. 33) and Nandappa Patil (Ex. 34), ~~but~~ one and all deposed that they saw accused Nos. 4 to 10 ~~xx~~ throwing stones at the house where the offence was committed.

The first question, to which the learned Sessions Judge addressed himself, is about the criminal conspiracy of the accused to the effect that accused Nos. 1 to 3 should ~~xxxx~~ cause the death of Ningappa, and that the remaining accused should rescue one or more of them if caught in causing his death. In connection with this conspiracy, the prosecution have examined one witness Shivalingappa (Ex. 15). The prosecution also rely on the fact that accused Nos. 4 to 10 were seen by a number of witnesses throwing stones at the house of Gursidappa shortly after Ningappa was stabbed in that house. The learned Sessions Judge is not prepared to place any reliance upon the word of Shivalingappa, as, in his opinion, the version of the prosecution, namely, that accused Nos. 2 and 3 came to the tea shop of accused Nos. 1 and 6, where accused

Nos. 4 to 10 were quietly sitting, and told them that the game was bagged, that accused No.1 was caught, that they should go with them for releasing him, that accordingly accused Nos. 4 to 10 ran towards the house of Gursidappa, and that the witness followed them and saw the accused Nos. 4 to 10 throwing stones at the house of Gursidappa, is not true. According to the learned Judge, in connection with this conspiracy, there was no evidence to show that accused Nos. 1 to 10 had met together at any time before accused Nos. 1 to 3 went to the house of Gursidappa, or that accused Nos. 1 to 3 were in the tea shop along with other accused before they went to Gursidappa's house. According to the evidence of two witnesses Basappa (Ex. 6) and Channappa (Ex. 7), it would appear that accused Nos. 2 and 3 only had gone to Ningappa's grocery shop inquiring where he was, that they then followed Basappa who was going to Gursidappa's house with pan and bidis for Ningappa, that on going there accused No.2 asked for accounts of himself according to Channappa and of accused No.4 according to Basappa, that after some time accused No.1 came there, and that when asked by Ningappa why he came, accused No.1 said that he had some business with accused No.2. It would appear therefore that accused Nos. 1 to 3 had not gone together to the house of Hippargi. The learned Sessions Judge is at pains to understand why accused Nos. 4 to 10 should have gone to the tea shop of accused Nos. 1 and 6, which was at a considerable distance from Gursidappa's house, and not have resorted to the Basawanna temple near Gursidappa's house and waited there, as the part that was said to have been played by accused Nos. 4 to 10 was to come to the rescue of any one of accused Nos. 1 to 3 who might be caught while committing the crime. The learned Judge is not prepared to draw the inference from the evidence of Shivalingappa that there was a prior agreement between all the ten accused for the rescue of those who might be caught. According to him, it is equally possible that accused Nos. 2 and 3 went to the tea shop of accused Nos. 1 and 6 to inform accused No.6, who is accused No.1's partner, that

accused No.1 was caught there, and that accused No.6 along with several others who were in the tea shop went for his rescue without any previous agreement between the ten accused. From the fact that accused 2 and 3 had gone to the tea shop of accused 1 and 6 and had given information of what had happened at Gursidappa's house, and that as a result of that informatio accused 4 to 10 ran towards Gursidappa's house and threw stone it is not enough to establish a previous agreement between them all to rescue any of the accused. As regards Shivalingappa, he was called by the Patil to serve as a Panch in connection with Panchnamas of the scene of offence and the production of the property lying on the scene of offence by the Patil. Shivalingappa did not mention either to the Patil or to the Head Constable that he had heard accused 2 and 3 saying to the other accused or what he had seen the other accused doing on hearing accused 2 and 3, and he admits that he kept mum right up to the time he gave evidence in the committal Court. It is likely that Baslingappa, the elder brother of the deceased, may have obliged this witness Shivalingappa by securing a loan for him from a Co-operative Society, of which Baslingappa is a Chairman. Shivalingappa has admitted that he had obtained a loan from this society, and that he got a second loan shortly before he gave evidence in the committal Court. From this the learned Sessions Judge observed that Baslingappa was a man who could influence the supervising union, and therefore he might have influenced Shivalingappa. The story told by Shivalingappa that accused 2 and 3 went to the tea shop of accused 1 and 6 and informed accused 4 to 10 that accused 1 was caught is a story which was told by this witness long long after the occurrence, and that too for the first time in the Court of the Committing Magistrate. The learned Public Prosecutor, who conducted the case, conceded that the mere fact that accused 2 and 3 went to the tea shop of accused 1 and 6 to give information that

accused 1 was caught and that thereupon accused 4 to 10 went and threw stones was not sufficient to hold that there was a previous conspiracy as alleged by the prosecution. In fact there is no evidence to prove the conspiracy between all these accused as alleged by the prosecution. Even two of the assessors also share the same opinion. Hence the charge of conspiracy must fail.

The second charge, and it is the main charge in the case, is that of murder, and that charge is against accused 1 to 3. The direct evidence on this point is that of Satappa (Ex. 11) and Gurpadappa (Ex. 13), and the statement of the deceased (Ex. 9) recorded by the Police Patil shortly after he was stabbed. Both these witnesses depose that after hearing a noise from the house of Gursidappa, they went there to see what the matter was, and that, when they went to the door, they say accused 2 and 3 holding Ningappa by the hands and accused 1 stabbing him with a dagger. They further say that as soon as they entered accused 2 and 3 left Ningappa and ran away, and that accused 1 was thrown on the ground by Ningappa who fell on him and that they snatched the dagger from accused 1 and prevented him from doing any further harm to Ningappa, and that they removed Ningappa to the inner apartment from the yard where the offence was committed and when they came out they found that accused 1 was also gone. According to them, there was none else in the house except Gursidappa and his wife who were in their room. Turning to the statement of Ningappa (Ex. 9) recorded by the Police Patil, it says:-

> "Today, that is, Saturday 18-7-1942 at about 8 a.m. Siddappa Bheemaraya Dudgi (Accused No.1) and Gurappa Sharnappa Honnur (accused 2) and Mahamadsa Abdulsa Shirshad (accused 3) came to my house and entered my house and Gurappa and Mahamadsa together held my hands; thereafter Siddappa took out a jambia from his waist and stabbed me on the left side of the stomach. Thereafter, Gurappa and Mahamadsa (accused 2 and 3) ran away. Siddappa (accused 1)

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"removed the jambia with which my stomach was stabbed and raised his hand to stab me again. In the meantime, Satappa, Channappa Kolar and Gurpadappa Channappa Patil snatched away the jambia from Siddappa's hand. I fell on Siddappa in a swoon."

It is to be noted in connection with this statement that it does not bear the signature of the deceased Ningappa, but only a left thumb mark of Ningappa. The witnesses Satappa and Gurpaddappa (Exs. 11 and 13) were present at the time. The Panch witness (Ex. 8), who has written the statement, has sworn that he wrote down what the deceased told the Patil, and that he read it over to the deceased who admitted it to be correct. Besides the signature of the deceased was not obtained either because his hand was quivering or because he could not sit up and sign. So far as this statement involves accused 3, the case of accused 3 is that his name was inserted in that statement at the instance of the witness Gurpadappa (Ex. 13), who according to accused 3 was his enemy, and accordingly it was so put in and that Ningappa's thumb mark was obtained by force to the statement. The Patil in his evidence says that soon after the incident he went to the house of Gursiddappa and there recorded the statement of Ningappa and got a Panchnama made about the property lying in the yard. The Patil has further stated that when he returned to the chavdi to write down his report to the police station he came to know that accused 1 had also received injuries in the same transaction and that therefore he went to the tea shop of accused 1 and 6 where accused 1 was lying and thereupon he made a Panchnama made of the injuries and recorded his statement. He further states that he wrote two reports regarding the two offences, one by accused 1 to 3 against Ningappa and the other by Ningappa and others against accused 1 and sent them to the Police Station. The statement of accused 1 recorded by the Police Patil is to the effect that on 18th July 1942 at about

9 a.m. he asked Gurappa who was in Gursiddappa's house to pay him the dues of his tea shop, that Ningappa the deceased said that Gurappa would not pay the dues and that he might do his worst, that He then stated that Gurappa's dues must be paid, that Ningappa the deceased then beat him with a stick in his hand on his head, that there were holes in the head which made him faint, that he dropped down on the ground, that Gurappa, Sangappa, Basappa, Khandoba and Saibanna all of them together beat him and threw him on the ground, that in the meanwhile he opened the door and went out and fell down, that accused 6 on hearing the news came there and took him away to the tea shop and that he was willing to go to the hospital. These two reports were according to the Patil sent at the same time or despatched at the same time, that is, at 5 p.m. and they reached the Police Station together at 10 p.m. There is no explanation, according to the learned Sessions Judge, as to why the Patil having received the informations at 3-4 hours after sunrise should have delayed the despatch of the two reports. From this dealy the learned Judge infers that there was sufficient time for persons interested in or hostile to the accused to rope in the names of people whom Baslingappa wanted to punish. The learned Sessions Judge is not inclined to hold that accused No.3 had at all gone to Gursiddappa's house as he had nothing to do with either accused No.2 or accused No.4 and as he had no reason to accompany accused 2 to Gursiddappa's house to demand the accounts. The learned Judge observes that there is no satisfactory explanation forthcoming as to why the signature of the deceased was not taken on his statement. The learned Judge also is of opinion that the name of accused 3 was included at the instance of his enemy Gurpaddappa. The learned Judge is not prepared to rely upon the evidence of Channappa, who said that accused 2 and 3 came to him and asked him where Ningappa was. At the time when accused 2 and 3 asked him about Ningappa, Basappa was there. It is strange to say that Channappa did not ask Basappa where Ningappa was, nor did he ask accused 2 and 3 to make inquiries of Basappa as to where Ningappa was. Chanappa also did not ask accused 2 and 3 why

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they wanted Ningappa. According to the learned Sessions Judge, if neither Channappa nor Basappa said anything about the deceased Ningappa, it was very strange that without being informed about Ningappa's whereabouts these two accused should follow Basappa, but as a matter of fact these two accused did not know that ~~Ningappa~~ he was Ningappa's labourer and that he was taking pan and bidis to Ningappa. Therefore the learned Judge finds it difficult to believe the evidence of Channappa and Basappa when they say that accused 2 and 3 made inquiries that morning about the whereabouts of Ningappa. According to Basappa, when he returned with pan and bidis he found another Channappa (Ex. 7) sitting with Ningappa in Ningappa's house, and accused 2 and 3 came there following him and took their seats, and accused 2 asked Ningappa to state the accounts of accused 4, in the meanwhile accused 1 came there, Ningappa asked him not to enter and there was a quarrel between them, accused 1 said that he would go where accused 2 was, and Ningappa told him that those people seemed to have come to quarrel and asked him to go to his residential house and get the people there to this house. Baslingappa has admitted that a few days before this incident there was a dispute between him and accused 2 about possession of a land, and that that dispute was settled by reference to arbitration, under which Baslingappa was to pay Rs.200 to accused 2. If it is so, it is difficult to understand that accused 2 would be asking for settling his own accounts when the accounts were already settled under the arbitration. On this footing, when Channappa says that accused 2 had asked Ningappa to settle his own accounts, Channappa was not telling the truth. The eye-witnesses Satappa and Gurpadappa (Exs. 11 and 13),who had come to the house of Gursiddappa where the offence took place, say that they came to the house after hearing a noise to see what the matter was. The learned Judge is not prepared to accept

the version of these two witnesses that on hearing a noise they went to the house of Gursiddappa. There is one point which is worth noting, namely, that accused No.1 had received as many as 19 injuries, which are deposed to by the Medical Officer of Sindgi. These injuries go to support accused 1's version that there were many persons in the house of Gursiddappa who had come there to take forcible possession from him of the house, and that in the struggle that followed accused 1 received his injuries at the hands of many persons. The numerous injuries on accused 1 would go to show, according to the learned Sessions Judge, that there must have been several people in the house at the time when accused 1 was assaulted and that these people must have gone there to dispossess Gursiddappa by force. From the statement of accused No.1 and from other circumstances the learned Sessions Judge seems to hold that Ningappa the deceased and five other people mentioned by accused 1 in his complaint must have gone there to dispossess Gursiddappa by force, and that accused 1 and 2 had gone there to help Gursiddappa and that accused 1 was assaulted by Ningappa and his people and that accused 2 ran away taking a fright and that accused 1 stabbed Ningappa in the fight. On the scene of offence two pairs of chappals and a turban were found lying. Accused 1 claims the turban as his. As regards the chappals, accused 1 denies that they belong to him. Accused 2 also denies that they are his. There were no chappals left by third persons. From this the learned Sessions Judge seems to doubt as to whether accused 3 was also there. According to the learned Judge, if Satappa and Gurpaddappa had really gone there when accused 1 gave the stab, and if accused 2 and 3 ran away at their sight, it is difficult to believe that they would allow accused 1 also to slip away. The learned Judge is not prepared to believe their story told by these witnesses that they removed Ningappa to the inner apartment, and that when they came out they found that accused 1 had also run away. In view of the fact that a number of injuries were found on the person of accused 1, it was not possible for him to run away with those injuries. Satappa and Gurpadappa say that they did not raise any alarm or cry for help,

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and if their story that they disarmed accused 1 by snatching away the jambia was true, they would not have removed Ningappa to the inner apartment until help came. Taking into consideration all these circumstances the learned Sessions Judge is not prepared to believe Satappa and Gurpadappa who claim to be eye witnesses. The conclusion arrived at by the learned Judge is that accused No.3 was not there, and that accused Nos. 1 and 2 were there, to help Gursiddappa, who was being forcibly dispossessed by Ningappa and his people, who were half a dozen in number. The learned Judge holds that the stab wound on Ningappa was caused by accused No.1, but that he did so not in furtherance of the common intention of himself and any other accused, and that accused No.2 was there along with accused No.1 to help Gursiddappa against being forcibly dispossessed and he ran away as soon as accused No.1 was mercilessly attacked by Ningappa and his people who were there.

The learned Sessions Judge then discusses the question about the right of private defence. It was argued on behalf of the prosecution that even if it be true that accused 1 was first beaten by Ningappa, he had a right to do so because Ningappa had committed criminal trespass by remaining on the premises even when he was asked why he came there and that therefore accused 1 had no right of private defence. The learned Sessions Judge holds that the mere entry upon the property in the possession of another against the wish of that other does not amount to criminal trespass. He observes that in this case it is doubtful whether the property was really in the possession of Ningappa. Gursiddappa was admittedly in possession of a portion of the same. Accused 1 was assaulted in the front yard soon after he entered the main door. The learned Judge holds that Ningappa's beating to accused 1 did amount to an offence affecting the body of accused 1, that Ningappa came to assault him with a dagger, and that apprehending that Ningappa would cause him grievous hurt or death accused 1 snatched the dagger from Ningappa's hand and aimed

the dagger at him. The learned Judge is not prepared to accept accused 1's statement, which was made for the first time in the Sessions Court, that Ningappa came to attack him with a jambia and that he snatched it from him apprehending danger to his life and aimed the dagger at Ningappa. He has not mentioned this fact either in his statement to the Patil or in his statement in the Committing Magistrate's Court. The learned Judge came to the conclusion that as there was a slight dislocation of the left incisor tooth, the accused was under the impression that his assailant would cause him grievous hurt, and that therefore a right of private defence was open to the accused which he did by inflicting the much more serious injury on the left side of the deceased's stomach. It is to be noted in considering the case of accused No.1 that the beating of accused No.1 continued for some time and then stopped. If so, there was no reason for accused No.1 to think that there was still danger to his body and therefore to stab Ningappa. Accused No.1 had given one stab, and according to the learned Sessions Judge it cannot be said that he had inflicted more harm than it was necessary for the purpose of defence. Therefore the learned Judge held that accused No.1 had not exceeded the right of private defence. I do not think that after the beating of accused No.1 had stopped, accused No.1 had any right of private defence, and assuming that he had, he exceeded that right, as there was no justification for causing the wound by means of a jambia which ultimately resulted in the deceased's death. Accused No.1 had ample time to have had recourse to the Police authorities. He ought not to have taken the law into his own hands by inflicting such a serious injury on a vital part of the body which ultimately resulted in the death of the victim. If the right of private defence is not open to accused No.1, then he is guilty under section 302 of the Indian Penal Code. Having regard to the nature of the injury, the part of the body where the injury was caused, and the weapon, viz., a jambia, used in causing that injury, in my opinion accused No.1 would be guilty under section 302. The

learned Sessions Judge in paragraph 23 discusses this aspect of the case when he considers the divided opinion of the assessors.

Accused No.2 is shown from the evidence to have been present at the time when this incident occurred. There was no reason for him to be present there except on the hypothesis that he had gone there to oppose any attempt at forcible dispossession of Gursiddappa of his house. Accused No.2 can be held to be guilty under section 302 read with section 34 of the Indian Penal Code. The circumstances in the case show that accused No.2 must have helped accused No.1 when he tried to inflict the wound on the deceased by means of a jambia.

Coming to the case of accused Nos. 4 to 10, who were charged with rioting punishable under section 147 and also with doing an act endangering life or personal safety of others punishable under section 336, the learned Sessions Judge is not prepared to believe the charge of rioting against accused Nos. 4 to 10, as the report (Ex. 38) of the Police Patil, which was sent to the Police Station, conveyed no information of this offence. The Police Patil explained this omission on the footing that as there was a Panchnama accompanying his report, which contained a joint statement of Satappa and Gurpadappa to the effect that these seven accused threw stones at the house of Gursidappa, he did not mention anything about this offence in his report. The learned Judge is not prepared to accept this explanation as satisfactory. He observes in this connection that as the Head Constable made a Panchnama the next day for the production by the Police Patil of Articles 1 to 4 to him, and as the Police Patil had delayed sending his report till 5 p.m., it appeared from these facts that there was some truth in the suggestion that the original Panahnama was only about the attachment of Articles 1 to 4, and that it contained no information that accused Nos. 1 to 4 had committed any crime. The mere production of

several stones found at the scene of offence,in the yard of Gursiddappa's house, was not sufficient to hold that the stones were sthrown at Gursiddappa's house or that accused Nos. 4 to 10 were responsible for the same. The Police Patil has stated in this connection before the Committing Magistrate that the stones were collected in a bag and placed on the veraandah before he went there. The Panch witness also admitted that when he went there the stones were being collected in a gunny bag and that they were poured out and counted at the time of the Panchnama. There is no Panchnama showing that the Patil or any witnesses had actually seen the stones lying in the yard of Gursiddappa. Besides the stones produced are not such as would be thrown to a distance of 50-60 feet. If the stones had been thrown at Gursiddappa's house, there would have been some marks on the walls of Gursiddappa's house. The Panchnama of the scene of offence is silent about the same. The Sub-Inspector has got a supplementary Panchnama made below Exhibit 16 on 22nd July 1942 showing that there were such marks on the wall. Satappa produced before the Sub-Inspector on the 23rd July 1942 six stones which he might have easily produced on the 19th of July 1942. Then again there is an additional difficulty, namely, that according to the prosecution accused Nos. 4 to 10 knew that accused No.1 was caught inside the house of Gursiddappa. If so, one would expect them to go to the door of Gursiddappa and bang the door or break it open by throwing stones on it, but instead of that they remained standing at Shri Giri's house, which is a distance of nearly 90 feet and threw stones from there into the yard of Gursiddappa. The whole story, according to the learned Sessions Judge, about accused Nos. 4 to 10 of throwing stones at Gursiddappa's house appeared to be highly unreliable. As regards the number of witnesses who have deposed to the fact that accused Nos. 4 to 10 were throwing stones, the learned Judge discusses the evidence of these witnesses in paragraph 25 of the judgment, and he has come to the conclusion that is recorded in

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paragraph 26 to the effect that in view of the fact that the commission of this crime was not referred to by the Patil in his report Ex. 38 and in view of the fact that it is doubtful whether stones were really thrown on the house of Hippargi Siddappa, and in view of the fact that the evidence does not seem to be independent and reliable, accused Nos. 4 to 10 were held not guilty of any offence agreeing with the opinion of two of the assessors. He therefore acquitted all the accused of the offences with which they were charged.

Taking the evidence as a whole and considering the probabilities in the case, I think that the conclusion arrived at by the learned Sessions Judge is not erroneous. I therefore do not think that this is a fit case for filing an appeal against the order of acquittal of accused Nos. 3 to 10.

As regards accused Nos. 1 and 2, I have already discussed their case, and I am of opinion that they are guilty of the offences with which they are charged. I am therefore of opinion that, so far as accused Nos. 1 and 2 are concerned, there are grounds for coming to the conclusion that they are guilty. Therefore an appeal, so far as accused Nos. 1 and 2 are concerned, ~~should~~ may be filed, and not as against the rest.

Bombay
10th April 1944

B S Rao

Government Pleader,
High Court, Bombay.

17/43/B

Below opinion in the case of Imperator versus Bheemappa Giriyappa and 5 others.(accused)

No. 14

Office of the
Government Pleader, High Court,
Bombay. Dated 3rd January 1945.
4th

Forwarded with compliments to the Remembrancer of Legal Affairs, Bombay with reference to his No.9053 dated 23rd December 1944.

2. All the papers received from him are herewith returned.

THE SECRETARY TO GOVERNMENT
LEGAL DEPARTMENT
No. 86
4-1-45

B. S. Rao

Government Pleader, High Court.

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Opinion in the case of Imperator versus Bheemappa Giriyappa and 5 others(accused).

The accused were charged under section 148 and 304 read with section 149 I.P.C. in that they and some others were members of an unlawful assembly having the common object of beating one Pandappa Vathar; that accused 1 was armed with an axe while the others were armed with sticks; that in prosecutio of the common object of the assembly they beat Pandappa and caused him injuries resulting in his death.

The prosecution story is set out in paras 2 and 3 of the judgment.

The medical evidence shows that there were 27 injuries all over the body of the deceased,all of which were abrasions, contusions, wheel-marks and contused wounds excepting one which was an incised flap wound 1½" x 1½" skin deep over the right knee front part; all these injuries were sufficient in the ordinary course of nature to cause death. Ex.37 which are post-mortem notes describe in para 17 injuries on the person of the deceased. The death was due to shock and haemorrhage as a result of injuries and collapse of lung. The Court holds that the offence committed was not murder but of culpable homicide not amounting to murder.

The next question is whether the accused were concerned in the offence. The prosecution rely upon the evidence of six eyewitnesses and the dying declaration Ex.6 of the deceased. The dying declaration mentions that the deceased was removing cowdung etc in the house of Veerappa which was used for tathering cattle. 25-30 people came armed with ringed sticks, ordinary sticks and stones and began to beat him. Some of them carried axes also. Accused 1 to 6 were among these 25-30 persons; the rest did not belong to this village and he could not

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recognise them. Hearing the noise his niece's son Sangappa came there; he was beaten on the head and he went inside. Then those people beat him and went into the village saying 'Din'. Because they moved about in the village throwing stones no one came there. Two things are clear from this statement viz the beating of the deceased took place in the house and there is no reference to the beating outside the house and that after beating the deceased the accused moved about in the village throwing stones. The Patil went to Pandappa's house 2 hours after sunrise. The Patil states that he saw 20-25 people standing by the side of the house where he went there, the door of the house closed. He got the door opened and saw Pandappa lying injured. There were 7-8 persons in Vittappa's house when Pandappa was lying injured. He says that most of the prosecution witnesses were in that house then. He has stated that he had seen accused 2 and 3 along with 20-25 persons standing by the side of the house. Accused 2 and 3 said that they had beaten Pandappa. He says that on the morning that day an hour before sunrise he had gone to answer the call of nature when he saw 25 people coming raising cries. Two of them surrounded him and two of them held him by his hands and asked him quickly to go home and the witness might do what he liked after sunrise. He has not mentioned these incidents in his reports. It is stated in his report that it was sent at 10 a.m. on 24.10.43 but it was not received at the police station at Kolhar station till 5 p.m. The journey to Kolhar station does not take more than 3 hours. From this it can be argued by the defence that the report was not sent by the Police Patil before 10 'clock. Considering that all the prosecution witnesses were inside the house with the door closed and considering the time when the report must have been despatched from Malegaon there is considerable scope for argument that as a result of deliberation that the names of

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the accused were inserted in the complaint in view of the strained relations between the accused and the deceased as deposed to by the Police Patil. The learned Judge was not wrong when he held after considering all these circumstance that the statement was made by Pandappa between 12-1 P.M. nearly 6 hours after the offence was committed. There are 6 witnesses who claim to be eye-witnesses; they are Sangappa Ex.13, Nandappa Ex.14, Sashappa Ex.15, Irappa Ex.17, Ningappa Ex 19 and Bheemappa Ex.20. Sashappa Ex.15 says that he, the deceased Pandappa and Nandappa were all sleeping in Veerappa's house. One hour before sunrise he heard the cries of Nandappa and got up and saw the deceased being beaten. 8-9 people were inside the house and 6 of them were beating Pandappa. He recognized 6 of them in the light of a lamp burning therein. Others besides the accused who were beating the xxxxxxx Pandappa were strangers, whereas he could not recognize them. There were some people outside the door. They took Pandappa outside the house beating him. The villagers on hearing the cries wanted to go to rescue of Pandappa but they could not do so as stones were being thrown at them. After they left they removed Pandappa to his house. The mob again came to the house and so they shut the door from inside. An hour after sunrise the Patil came and they open the door to him. In cross examination he says that accused 1 struck Pandappa on the road. Before the police he had stated that accused 1 was carrying a stick as a result of beating of Pandappa and himself blood had fallen both inside and outside the house. He did not tell the Patil about blood fallen on these places. He says that they did not send word to the Patil. This witness was brought up by Pandappa who was his mother's maternal uncle and he was living with him. He is an interested witness. He has stated

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to the police that on hearing cries of Nandappa he woke up and saw many persons in the house and then lay in bed as before out of fright although he has denied it in Court. His story that he was hit by a stone outside the house is falsified by the medical evidence which goes to show that the injury might have been caused by some hard and blunt substance and by the fact that Pandappa has not stated that he was taken outside his house and beaten by the accused. The learned Judge is of the opinion that in order to explain the fact that eye-witnesses on behalf of the prosecution were all sitting in Pandappa's house when the Patil arrived, the prosecution has invented the story that Pandappa was dragged outside and beaten there and the witnesses having seen this beating by standing outside and then carrying Pandappa into his house. If Pandappa had been taken out from his house, that fact would have been mentioned in Pandappa's statement Ex.6; besides there was no necessity to take Pandappa outside when the assailants were in a position to finish the beating inside the house. Next witness is Nandappa Ex.14. He is not mentioned by Pandappa in his statement Ex.6. Nandappa has admitted in his deposition that he used to go out ~~in~~ with bullocks early every morning, there is no explanation offered why he should remain in the house when Pandappa was beaten. He says in his cross examination that Irrappa, Sashappa, Bheemappa and Ningappa remained sitting by his side after he was brought in. He had not told any ~~more~~ body of the incident till he was examined by the P.S.I. The defence have suggested that as the witness is in the service of Pandappa and as Pandappa's people had promised him a wife and a land ~~as he was promised~~ a half share in the land transferred to Sangappa by Pandappa's widow the witness was giving false evidence. The next witness is Sashappa Ex.15. He is

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Pandappa's wife's brother. This witness as also witnesses Bheemapa, Vingappa and Irappa started after hearing cries from the direction of Veerappa's house went out of their house and standing near Basangouda's door saw Pandappa being beaten by the 6 accused and others. As stones were thrown at them they returned home and after some time they went to the place where Pandappa was lying and took him to his house. They sat at Pandappa's house till the Patil came there. Although the houses of Irappa and Vingappa are quite near Patil's house they did not care to inform the Patil about the incident. It is to be noted that none of the neighbours of Pandappa came out to see what was going on or in fact did anything. It is difficult to believe that these Kumbars who stay at the other end of the village would come to see what is going on in Pandappa's house inspite of stone throwing as alleged by the prosecution witnesses. It is equally unlikely that the 3 witnesses after going home would come back after half an hour to see what Pandappa's fate was, to take him inside the house. They were however present in Pandappa's house when the Police Patil arrived there till the time Pandappa made his complaint to him and submitted his report at about 1 P.M. There was enough of time for deliberation and involving falsely these accused. The evidence goes to show that there was enmity between Pandappa and some of the prosecution witnesses and the accd. About this time there were dacoities going on in round about the village; Pandappa was occupying a house which looked like the house of a rich man. Pandappa has stated in his statement Ex.6 that these accused after beating him went into the village throwing stones. In fact there is the evidence of witness Hanmappa Ex.22, Bhagawa Ex.23, Mudiawa Ex.24, Balawa Ex.26 which goes to show that there was indiscriminate stone

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throwing. Probabilities therefore are that the dacoits were responsible for the beating of Pandappa. As regards the Patil's statement that he had seen accused 2 and 3 when he went to Pandappa's house in the morning he has not mentioned it in his report. Taking the evidence of the prosecution witnesses and looking to the probabilities and surrounding circumstances of the case the learned Judge was inclined to accept the defence suggestion that Pandappa was beaten by some unknown dacoits and that taking advantage of the injuries on Pandappa, he his friends and relative held deliberation and decided to involve falsely the accused who are their enemies.

Accused 1 was taking medicine from the Bijapur Doctor on 23.o.43 and subsequent days. It was not possible for him to reach the village in time to join the mob who attacked Pandappa in the early hours of 24.10.43 in view of the Railway timing. The assessors have unanimously given their opinion that the 6 accused are not guilty. In view of the prosecution evidence read with the probabilities and the circumstances in the case I am of opinion that this is not a fit case for appeal.

B S Rao

Bombay.
3rd January 1945.

Government Pleader, High Court.

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" True copy - Original papers being of bad quality - Destroyed."

Superintendent,
D Branch, Legal Department.